

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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GARY GILLIAN and MILENA CESARSKA INDEX NO. 1:10-cv-06056-JSR
on behalf of themselves and others similarly
situated,

Plaintiffs,

v.

**STARJEM RESTAURANT CORP. d/b/a/
FRESCO BY SCOTTO,**

Defendant.

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DECLARATION OF MICHAEL D. PALMER

I, Michael D. Palmer, under penalty of perjury, declares as follows:

1. I am an attorney with Joseph, Herzfeld, Hester & Kirschenbaum LLP, Plaintiffs' counsel in the above-captioned matter.

2. I submit this declaration in support of Plaintiffs' Sur-reply in Response to Defendants' Motion for Partial Summary Judgment and Defendants' Submission of the Declaration of Pablo Alvarado in Their Reply.

3. Attached hereto as Exhibit A is a true and correct copy of Defendant's Initial Disclosures. Defendant did not amend or supplement the initial disclosures.

4. Attached hereto as Exhibit B is a true and correct copy of an excerpt from Defendant's Responses to Plaintiff's First Set of Requests for Production of Documents. In Document Request No. 72, Plaintiffs requested "All statements concerning or obtained from witnesses, potential witnesses, and/or persons contacted in connection with this case." After first objecting to the request, Defendant represented that "there are no documents responsive to this

Request in their possession, custody, or control.” Defendant did not amend or supplement the responses to Plaintiffs’ document requests. Defendant did not produce the Declaration of Pablo Alvarado during discovery.

5. On or about March 8, 2011, Defendants produced employee schedules for Fresco by Scotto from the fall of 2010. These documents were not Bates stamped.

6. Attached hereto as Exhibit C is a true and correct copy of three schedules, for the weeks of October 11 – 16; November 1 – 6; and November 8 – 13. (Schedules were not produced for the last two weeks of October 2010.)

7. Pablo is listed as a runner (who was assigned to work two shifts as an expediter) for the week starting October 11, 2010.

8. Pablo is not listed on the schedule for the weeks starting November 1, 2010 or November 8, 2010.

I affirm, under penalty of perjury, that the above and foregoing information is true and correct.

Dated: New York, New York
April 12, 2011

/s/ Michael D. Palmer
Michael D. Palmer